

Susan K. Stahlfeld
Adam G. Hughes
Miller Nash LLP
601 Union Street, Suite 4400
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Telephone: (206) 622-8484

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

ELIZABETH BERKERS, an individual,

Plaintiff,

v.

RITE AID CORPORATION, a
Delaware corporation, THRIFTY
PAYLESS, INC., a California
corporation,

Defendants.

Civil No.

NOTICE OF REMOVAL

TO: The Honorable Judges of the United States District Court for the Eastern
District of Washington at Spokane

Defendants Rite Aid Corporation and Thrifty Payless, Inc. (hereafter
“Rite Aid” or “Defendants”), by and through their attorneys, Adam G. Hughes, and
Miller Nash LLP, respectfully state as follows:

1. Defendants hereby exercises their rights under 28 U.S.C.
§§ 1441 *et seq.* to remove this action from the Superior Court for Spokane County,
in which the case is now pending as Elizabeth Berkers v. Rite Aid Corporation,
et al, Cause No. 2010-02-01647-8.

NOTICE OF REMOVAL - 1

MILLER NASH LLP
ATTORNEYS AT LAW
TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

SEADOCS:419350.1

2. This is a civil action in which plaintiff Elizabeth Berkers, asserts claims against Rite Aid for violation of state and federal laws for disability discrimination, sexual harassment / hostile work environment, wrongful discharge in violation of public policy, negligent or intentional infliction of emotional distress, violation of Washington's consumer protection act, COBRA violations, and wage and hour law violations. Plaintiff has not stated a specific amount of damages in her complaint, but plaintiff seeks: (1) general non-economic damages, including loss of enjoyment of life, mental and emotional distress, and loss of consortium; (2) special and economic damages for loss of past and future earnings, wages, pensions, benefits and other out of pocket economic losses; (3) treble damages under RCW 19.86 et seq.; (3) attorney fees and costs; and (4) pre-judgment and post-judgment interest. Complaint at pp. 16-17. Prior to serving and filing her lawsuit, plaintiff stated affirmatively that if she pursued her claims in court, she would seek damages far in excess of \$75,000.

3. Plaintiff is a resident of the State of Washington. Complaint at ¶ 1.1.

4. Rite Aid Corporation is a Delaware corporation with its principal place of business in Pennsylvania, and Thrifty Payless, Inc. is a California corporation with its principal place of business in California. 28 U.S.C. § 1332 (c)(1).

5. This court has jurisdiction because of diversity of citizenship with a demand for damages that is reasonably construed to exceed \$75,000. 28 U.S.C. § 1332. This court also has jurisdiction pursuant to 28 U.S.C. § 1331 because plaintiff has asserted claims based upon federal law.

6. Rite Aid removes this action to this court pursuant to 28 U.S.C. § 1441(a). Defendants, by exercising their right to remove this action, do not

NOTICE OF REMOVAL - 2

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1 waive any of its objections or defenses.

2 7. Plaintiff's complaint was filed in state court on or about
3 April 26, 2010, and was served on Rite Aid on or about March 31, 2010. In
4 accordance with the requirements of 28 U.S.C. § 1446, this Notice of Removal is
5 filed within 30 days of the receipt of the complaint.

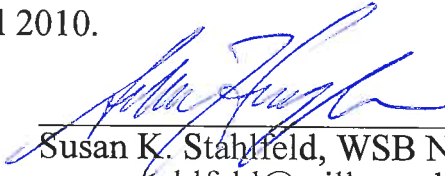
6 8. Also in accordance with the requirements of 28 U.S.C. § 1446,
7 attached hereto as **Exhibit 1** are true and correct copies of the Case Assignment
8 Notice, summons, and complaint from the state court action. Rite Aid will file a
9 verified copy of all additional state court pleadings within 10 business days.

10 9. Venue is proper in this district pursuant to 28 U.S.C. § 1391
11 because plaintiff's claims allegedly arose in Spokane County, Washington.

12 10. Written notice of the filing of this Notice of Removal will be
13 filed with the court clerk of the Superior Court of Washington for Spokane County
14 and provided to plaintiff's counsel in accordance with 28 U.S.C. § 1446(d).

15 WHEREFORE, defendants request that the above-entitled action be
16 removed from the Superior Court of Washington for Spokane County to the United
17 States District Court for the Eastern District of Washington at Spokane.

18 DATED this 28th day of April 2010.

19
20 
21 Susan K. Stahlfeld, WSB No. 22003
22 susan.stahlfeld@millernash.com
23 Adam G. Hughes, WSB No. 34438
24 adam.hughes@millernash.com
25 Miller Nash LLP
26 601 Union Street, Ste. 4400
Seattle, WA 98101
Telephone: (206) 622-8484
Fax: (206) 622-7485

Attorneys for Defendants

1 I hereby certify that on April 28, 2010, I electronically filed the
2 foregoing Notice of Removal with the Clerk of the Court using the CM/ECF
3 System and served the foregoing Notice of Removal on:

4 Eowen S. Rosentrater
5 Law Office of Eowen S. Rosentrater, PLLC
6 19 W. Pacific Avenue
7 PO Box 31522
8 Spokane, WA 99223-3025
9 FAX # (509) 271-3432
10 erosentrater@gmail.com

11 Attorneys for Plaintiff

12 by e-mailing a true and correct copy to erosentrater@gmail.com and mailing via
13 United States Postal Service a true and correct copy to Ms. Rosentrater's last
14 known address as shown above on the date set forth below.

15 Under the laws of the state of Washington, the undersigned hereby
16 declares, under the penalty of perjury, that the foregoing statements are true and
17 correct to the best of my knowledge.


18 Executed at Seattle, Washington, this 28th day of April, 2010.

19 s/Adam G. Hughes

20 Adam G. Hughes, WSB No. 34438
21 Miller Nash LLP
22 601 Union Street, Suite 4400
23 Seattle, WA 98101-2352
24 Telephone: (206) 622-8484
25 Fax: (206) 622-7585
26 adam.hughes@millernash.com

Of Attorneys for Defendants

Certificate of Service

(Copy Receipt)	Clerk's Date Stamp
 <p>SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE</p> <p>ELIZABETH BERKERS</p> <p>Plaintiff(s)/Petitioner(s),</p> <p>vs.</p> <p>RITE AID CORPORATION</p> <p>Defendant(s)/Respondent(s).</p>	<p>JUDGE KATHLEEN M. O'CONNOR 92</p> <p>CASE NO. 2010-02-01647-8</p> <p>CASE ASSIGNMENT NOTICE AND ORDER (NTAS)</p> <p>CASE STATUS CONFERENCE DATE: AUGUST 6, 2010 AT 8:30 AM</p>

ORDER

YOU ARE HEREBY NOTIFIED that this case is preassigned for all further proceedings to the judge noted above. **You are required to attend a Case Status Conference before your assigned judge on the date also noted above. The Joint Case Status Report must be completed and brought to the Status Conference. A Case Schedule Order, with the trial date, will be issued at the Status Conference.**

Under the individual calendar system, the court will operate on a four-day trial week. Trials will commence on Monday, Tuesday, Wednesday or Thursday. Motion Calendars are held on Friday. All motions, other than ex parte motions, must be scheduled with the assigned judge. Counsel must contact the assigned court to schedule motions and working copies of all motion pleadings must be provided to the assigned court at the time of filing with the Clerk of Court. Pursuant to LCR 40 (b) (10), motions must be confirmed no later than 12:00 noon two days before the hearing by notifying the judicial assistant for the assigned judge.

Please contact the assigned court to schedule matters regarding this case. You may contact the assigned court by phone, court department e-mail or through the Spokane County Superior Court web page at <http://www.spokanecounty.org/superiorcourt>

DATED: 04/26/2010



MARYANN C. MORENO
PRESIDING JUDGE

NOTICE: The plaintiff shall serve a copy of the Case Assignment Notice on the defendant(s).

COPY
ORIGINAL FILED

APR 28 2010

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

ELIZABETH BERKERS, an individual,

Plaintiff,

No.

10201647-8

SUMMONS

vs.

RITE AID CORPORATION, a Delaware
corporation, THRIFTY PAYLESS, Inc., a
California corporation,

Defendants.

TO DEFENDANTS RITE AID CORPORATION and THRIFTY PAYLESS, Inc.: A lawsuit has been started against you in the above-entitled Court by Elizabeth A. Berkers, Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and by serving a copy upon the person signing this Summons within twenty (20) days after the service of this Summons, (or within 60 days, after the service of this summons, if you were served outside of the State of Washington) excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned

SUMMONS
PAGE 1

LAW OFFICE OF EOWEN S. ROSENTRATER, PLLC
19 W. Pacific Ave. P.O. Box 31522
Spokane, WA 99223-3025
(509) 868-5389 (T)
(509) 271-3432 (F)

1 must be in writing and must be served upon the person signing this Summons. Within 14 days after you
2 serve the demand, the plaintiff must file this lawsuit with the Court, or the service on you of this
3 Summons and Complaint will be void.

4 If you wish to seek the advice of an attorney in this matter, you should do so promptly so that
5 your written response, if any, may be served on time.

6 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of
7 Washington.
8

9
10 DATED this 24th day of March, 2010.

11 
12

13 EOWEN S. ROSENTRATER, WSBA No. 36744
14 Law Office of Eowen S. Rosentrater, PLLC
15 Attorney for Plaintiff, Elizabeth Berkers
16
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COPY
ORIGINAL FILED

APR 28 2010

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

ELIZABETH BERKERS, an individual,

Plaintiff,

No.

10201647-8

vs.

COMPLAINT FOR DAMAGES

RITE AID CORPORATION, a Delaware
corporation, THRIFTY PAYLESS, INC., a
California corporation,

Defendants.

Elizabeth Berkers, by and through her attorney of record, Eowen S. Rosentrater, appears and states
by way of Complaint the following:

I. PARTIES, JURISDICTION AND VENUE

1.1 Plaintiff Elizabeth Berkers is, and at all relevant times hereto, has been a married woman
and a resident of Spokane County, Washington. Ms. Berkers has satisfied all conditions precedent to the
maintenance of this suit.

1.2 Rite Aid Corporation is a Delaware corporation and Thrifty Payless, Inc. is a California
corporation, hereinafter collectively referred to as "Rite Aid," both of which are licensed to conduct and
are conducting business in the State of Washington.

1.3 All actions and omissions giving rise to Ms. Berker's claims took place in Spokane
County, Washington. Jurisdiction and venue are appropriate in this Court.

COMPLAINT
PAGE 1

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(509) 868-5389 (T)
(509) 271-3432 (F)

II. FACTS

2.1 Ms. Berkers was employed with Rite Aid in Spokane, Washington for approximately twenty-five years. Of those twenty five years, Ms. Berkers was employed fifteen years as a pharmacy technician for Rite Aid.

2.2 On or about July 1, 2008, Ms. Berkers was offered a position at the Franklin Park Rite Aid store in Spokane.

2.3 While the job required a transfer from the Shadle Park Rite Aid store, it also offered regular hours, working Monday through Friday from 9:00 a.m. to 5:00 p.m., as opposed to the irregular shifts Ms. Berkers had previously been working.

2.4 Ms. Berkers accepted the transfer to the Franklin Park Rite Aid on or about July 1, 2008.

2.5 On Ms. Berkers' first day at the Franklin Park Rite Aid, Ms. Berkers was warned by a fellow pharmacy technician to "watch out" because "if they don't like you, you won't have a job."

2.6 Ms. Berkers learned that she was replacing another employee who "they did not like" and who, subsequently, was transferred out of the Franklin Park store as a result.

2.7 On her first day at the Franklin Park Rite Aid, Ms. Berkers was instructed and encouraged by her immediate supervisor, Laina Hill, to say the words "fuck you" in front of a group of pharmacy staff co-workers. Ms. Hill stated, "that's the way we talk around here."

2.8 Ms. Berkers was ashamed but felt forced to comply and spoke the words, as she was instructed, in front of a group of people she had just met.

2.9 The pressure to comply with the offensive language continued through the next year of Ms. Berkers' employment at the Franklin Park Rite Aid store.

2.10 In addition, a younger, male co-worker, Josh Klein, began physically and verbally harassing Ms. Berkers.

1 2.11 Mr. Klein the young male co-worker's verbal and physical conduct was encouraged by Ms.
2 Berkers' co-workers and supervisors, including Laina Hill, Ms. Berkers' immediate supervisor.

3 2.12 The Mr. Klein began repeatedly poking Ms. Berkers in the ribs, touching her ears and
4 blowing on her neck when he was near or walked by Ms. Berkers while on shift.

5 2.13 Mr. Klein continually referred to Ms. Berkers' behind as her "rump roast" and repeatedly
6 made comments and references about Ms. Berkers' buttocks as he called it a "rump roast."

7 2.14 Mr. Klein often used offensive, sexually oriented language to harass and embarrass Ms.
8 Berkers.
9

10 2.15 Mr. Klein frequently sent dirty images and text messages to the store managers.

11 2.16 In an attempt to embarrass Ms. Berkers and involve her in his inappropriate conduct, Mr.
12 Klein would show the images or read the texts aloud to Ms. Berkers and tell her to watch the recipient
13 manager's faces as they read the text or looked at the image.
14

15 2.17 Mr. Klein was never disciplined for this conduct.

16 2.18 On another occasion, Mr. Klein asked if Ms. Berkers had ever done a "blumpkin."

17 2.19 Ms. Berkers did not know what a "blumpkin" was and did not know how to respond to her
18 co-worker.

19 2.20 Other employees and Ms. Berkers' supervisors, including Laina Hill, egged the male co-
20 worker on, encouraged him to continue his harassing and embarrassing questions to Ms. Berkers about a
21 "blumpkin."
22

23 2.21 Ms. Berkers expressed that she was uncomfortable, however, the supervisors and the co-
24 workers were relentless.

25 2.22 In an effort to halt the pressure and harassment, Ms. Berkers finally replied that yes, she
26 had done a "blumpkin."

1 2.23 After Ms. Berkers "admitted" that she had performed a "blumpkin," Ms. Hill and the male
2 co-worker proceeded to laugh and tell the rest of the staff on shift that Ms. Berkers had performed a
3 "blumpkin."

4 2.24 This resulted in the remainder of the staff, including Ms. Berkers' supervisors, making fun
5 of and humiliating Ms. Berkers for the remainder of the day.

6 2.25 Much to Ms. Berkers' embarrassment and humiliation, she was later crudely told by a co-
7 worker that a "blumpkin" refers to the act of giving someone a "blow job" (oral sex) while they are
8 "taking a shit."

9 2.26 Ms. Berkers does not speak in that way, does not act in that way and was completely
10 mortified and humiliated by the reference and description.

11 2.27 Over the course of the year at the Franklin Park Rite Aid, Ms. Berker's repeatedly asked
12 Josh Klein to stop his physical and verbal conduct.

13 2.28 Over the course of the year at the Franklin Park Rite Aid, Ms. Berkers repeatedly
14 complained to Ms. Hill and Troy Kerr, the store manager, about the conduct of Josh Klein and expressed
15 that she was uncomfortable with Mr. Klein's conduct toward her and, generally, in the workplace.

16 2.29 Any complaint about Mr. Klein's conduct resulted in instant ostracization of Ms. Berkers
17 by other co-workers, supervisors and managers, which would last for up to a week.

18 2.30 The complaints would not result in disciplinary action against Mr. Klein and his conduct
19 did not stop.

20 2.31 The male co-worker's conduct was not addressed.

21 2.32 The male co-worker's physical and verbal conduct was encouraged by other co-workers
22 and by Laina Hill, Ms. Berkers' immediate supervisor.

1 2.33 Ms. Berkers made it known to her supervisors that she felt Mr. Klein's conduct was sexual
2 harassment and was unacceptable.

3 2.34 However, the more Ms. Berkers complained to her supervisors about Mr. Klein's conduct,
4 the more encouragement the co-worker was given by Ms. Hill and other employees.

5 2.35 Ms. Hill and the male co-worker are good friends outside of the workplace and Ms. Hill
6 continually supported the male co-worker in his offensive conduct and offensive language and harassment
7 of Ms. Berkers.

8 2.36 Ultimately, Ms. Berkers grew tired of the requirement that she endure the harassment to
9 "fit in" so that she could keep her job.

10 2.37 After the "blumpkin" conversation and humiliation, Ms. Berkers refused to participate in
11 any way in the humiliating, offensive banter that was a daily occurrence at the Franklin Park Rite Aid.

12 2.38 Ms. Berkers began vehemently and continually reporting all conduct, including past
13 offensive and harassing conduct to the store manager, the district manager and every supervisor above her
14 who she was aware of.

15 2.39 On approximately September 16, 2009, this hostile conduct came to a head when another
16 employee, Shawn, yelled at Ms. Berkers in front of the pharmacy employees and customers.

17 2.40 On approximately September 16, 2009, Shawn approached Ms. Berkers, stood very close
18 to Ms. Berkers and, towering over her with his 6'2", large frame, yelled at Ms. Berkers telling her that she
19 "makes everyone's life miserable."

20 2.41 Ms. Berkers was alarmed, shaken and emotionally distraught after Shawn's outburst and
21 asked the assistant manager, Kathie, if she could go home.

22 2.42 Ms. Berkers was given permission to go home by a supervisor but later that day was called
23 back to the store by Ms. Laina Hill.

1 2.43 In approximately September 2009, after Ms. Berkers was verbally attacked by Shawn, Ms.
2 Berkers contacted the regional human resources manager, Jimmy Gonzalez, to report the conduct and
3 harassment that Ms. Berkers had been required to endure for nearly a year.

4 2.44 Immediately after Ms. Berkers made her report to Mr. Gonzalez, all of the pharmacy staff
5 and store supervisors became openly angry and hostile toward Ms. Berkers.

6 2.45 Immediately after Ms. Berkers made her report to Mr. Gonzalez, all of the pharmacy staff
7 and store supervisors began to retaliate against and ostracize Ms. Berkers as a direct result of Ms. Berkers'
8 report to Mr. Gonzalez.

9 2.46 As a direct result of Ms. Berkers' report to Mr. Gonzalez, the entire pharmacy staff began
10 to leave Ms. Berkers out of conversations, began ostentatiously gathering together in aisles of the store,
11 whispering and looking at Ms. Berkers while she was working.

12 2.47 In continued retaliation to Ms. Berkers' report to Jimmy Gonzalez and Ms. Berkers refusal
13 to continue to endure the harassment, Laina Hill informed Ms. Berkers that Ms. Berkers was going to get
14 written up for walking out and suspended for three days.

15 2.48 In continued retaliation to Ms. Berkers' report to Mr. Gonzalez and Ms. Berkers refusal to
16 continue to endure the harassment, Laina Hill also informed Ms. Berkers that other supervisors,
17 particularly the store manager, Troy Kerr, wanted Ms. Berkers to be fired.

18 2.49 Ms. Berkers had never, in her twenty-five year employment history with Rite Aid, been
19 written up or otherwise disciplined for any conduct.

20 2.50 This disciplinary action just added force and support to the hostility of the staff toward Ms.
21 Berkers and was clearly in direct retaliation for Ms. Berkers refusing to continue to endure the ongoing
22 sexual harassment.

1 2.51 When Ms. Berkers returned to work after the three day suspension, none of Ms. Berkers
2 co-workers would speak with her, a supervisor, Laura, slammed a door in Ms. Berkers' face and refused
3 to answer any of Ms. Berkers' questions.

4 2.52 Supervisor Laura also acted rudely toward Ms. Berkers, openly showing anger and
5 hostility toward her in front of customers when Ms. Berkers needed Laura to do a void and return.

6 2.53 Other staff members continually refused to speak to Ms. Berkers, making it clear that they
7 were deliberately refusing to respond to her questions and comments and continually glared at Ms.
8 Berkers.

9 2.54 In further hostility and retaliation, during her suspension, Ms. Berkers' co-workers had
10 posted "raptor" cards in the break room for the male co-worker who had been harassing Ms. Berkers.

11 2.55 The "raptor" cards are part of a corporate policy whereby employees can post positive
12 statements about co-workers in a public forum.

13 2.56 These newly posted "raptor" cards indicated support for the male co-worker and his
14 behavior, saying things such as "you are so much fun to have around" and making it clear to Ms. Berkers
15 that the employees and supervisors did not support her reports of Mr. Klein's continued harassment and
16 added to the hostility of the work environment.

17 2.57 After Ms. Berkers' return to work, Mr. Gonzalez called the store to interview Shawn about
18 the incidents involving Mr. Josh Klein and Shawn.

19 2.58 Shawn stood in front of the pharmacy staff, including Ms. Berkers, and responded to the
20 interview questions for forty-five minutes.

21 2.59 During that call, Shawn reported to Mr. Gonzalez, the human resources representative that
22 Ms. Berkers was insubordinate.
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1 2.60 After the call, Mr. Klein, Shawn, Troy Kerr, the manager, and Laura, another supervisor,
2 stood in a nearby aisle, just out of earshot, but nevertheless talking and looking obviously and repeatedly
3 at Ms. Berkers.

4 2.61 Their continued retaliation made Ms. Berkers uncomfortable and added to the unwelcome,
5 hostile environment.

6 2.62 In a subsequent conversation with Mr. Gonzalez, Mr. Gonzalez told Ms. Berkers that she
7 brought the sexual harassment on herself and further identified Ms. Berkers as the insubordinate
8 employee.

9 2.63 The supervisors in the chain of command of the Franklin Park Rite Aid have made it clear
10 that Ms. Berkers' endurance of sexual intimidation is a term or condition of her employment at Rite Aid.

11 2.64 The group, including Ms. Hill and other co-workers, have made it clear that Ms. Berkers is
12 not welcome at the store.

13 2.65 The open hostility and lack of support by any supervisors have made it impossible for Ms.
14 Berkers to return to work at Rite Aid.

15 2.66 On Ms. Berkers' last day at work at Rite Aid, the hostility of the environment was
16 recognized and noted by the Franklin Park Rite Aid's assistant manager, Kathy.

17 2.67 Kathy remarked to Ms. Berkers that she was "really sorry" and that she knew what Ms.
18 Berkers had been "going through back there [in the pharmacy]."

19 2.68 No supervisors made any effort to correct the hostile work environment, despite their
20 direct knowledge of the conditions Ms. Berkers had been subjected to while at work.

21 2.69 On approximately September 22, 2009, Ms. Berkers formally requested that she be
22 transferred to another store.
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1 2.70 Ms. Berkers was told by Mr. Gonzalez that a transfer would not occur and was not
2 approved.

3 2.71 Ms. Berkers has since learned that even transfer would not cure the intolerable work
4 environment because Laina Hill, Mr. Klein and other employees have spoken with both managers and
5 staff at other Rite Aid stores in Spokane and have made disparaging, humiliating, false and retaliatory
6 statements about Ms. Berkers.

7
8 2.72 In fact, Ms. Berkers has heard from employees at other stores that Ms. Hill has said, Rite
9 Aid "will not transfer their problems" especially, "a bitch like Beth [Ms. Berkers]."

10 2.73 The lack of support of Ms. Berkers was also evident through supervisors' conduct aside from
11 the sexual harassment.

12 2.74 In addition to the ongoing sexual harassment and open hostility toward Ms. Berkers at
13 every level of store management, Ms. Berkers was on shift one morning at approximately 8:10 a.m. when
14 the store was robbed by an armed assailant.

15
16 2.75 On the morning of April 29, 2009, Ms. Berkers was working in the pharmacy with Mona
17 Armstrong, another pharmacy technician.

18 2.76 An armed man approached Mona and demanded all of the methadone in the pharmacy.

19 2.77 The man had a knife but from where Ms. Berkers stood, she believed he had a gun.

20 2.78 Ms. Berkers could not do anything to assist Mona and feared for both Mona's life and her
21 own life.

22
23 2.79 This was the second time in her employment at Rite Aid that Ms. Berkers had found
24 herself in a life-threatening situation while on shift where she could not protect herself or the employee
25 working with her.
26

1 2.80 In approximately 1996, Ms. Berkers had been working the grave-yard shift and witnessed a
2 cashier getting a gun put to her head during an armed robbery.

3 2.81 On both occasions, Ms. Berkers felt helpless to assist her co-worker and feared for both her
4 own life and for her co-worker's life.

5 2.82 After the April 29, 2009 robbery, Ms. Berkers suffered from anxiety, fear, extreme
6 sadness, low energy, panic attacks, intrusive thoughts and bad dreams.

7 2.83 Ms. Berkers was not sent home after the robbery but was required to finish her shift.

8 2.84 Immediately after the robbery, Ms. Berkers reported her anxiety to a supervisor and was
9 given a 1-800 Rite Aid number to call for assistance.

10 2.85 Ms. Berkers did call the 1-800 number and had to leave a message.

11 2.86 No one returned Ms. Berkers' call and no follow up support was provided.

12 2.87 Ms. Berkers' anxiety, depression, bad dreams and panic attacks have continued.

13 2.88 As a direct result of the retaliation, open hostility and ostracization which has occurred due
14 to Ms. Berkers' refusal to participate in the ongoing sexual harassment, Ms. Berkers had an emotional
15 attack and was forced to see a counselor and psychiatrist.

16 2.89 Both a counselor and a treating psychiatrist have concluded that Ms. Berkers is suffering
17 from Post Traumatic Stress Disorder and depression resulting from a knife-point robbery she witnessed at
18 work at Rite Aid on April 29, 2009 and which was directly triggered, aggravated and contributed to by the
19 hostile situation she is subjected to at work on a daily basis at the Franklin Park Rite Aid store.

20 2.90 Ms. Berkers' medical providers have concluded that Ms. Berkers is unable to return to
21 work at Rite Aid or otherwise at this time due to the ongoing hostile situation and the impact of the hostile
22 work environment on Ms. Berkers' emotional state and she has not been medically released to return to
23 work.
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25
26

1 2.91 After beginning her medical leave from work, Ms. Berkers' medical insurance benefits
 2 were instantly terminated by Rite Aid Corporation and remained terminated for the month of November
 3 21, 2009 through December 21, 2009.

4 2.92 After beginning her medical leave from work, Ms. Berkers' wages were withheld for
 5 approximately two months, from September 24, 2009 through November 21, 2009. Those wages remain
 6 unpaid.
 7

8 2.93 As a direct result of the robberies, sexual harassment and the hostile work environment at
 9 Rite Aid, Ms. Berkers has suffered and continues to suffer mental anguish, depression, anxiety, stress,
 10 symptoms of Post Traumatic Stress disorder, impacting her daily life and relationship with her husband
 11 and family.

12 2.94 As a direct result of the robberies, sexual harassment and the hostile work environment at
 13 Rite Aid, Ms. Berkers has suffered and continues to suffer economic and noneconomic damages,
 14 including but not limited to mental anguish, loss of enjoyment, loss of consortium, mental distress, lost
 15 wages, lost benefits, consequential damages and other general and special damages in amounts to be
 16 proven at trial.
 17

18 **III. CLAIM FOR HOSTILE WORK ENVIRONMENT AND** 19 **SEXUAL HARASSMENT**

20 3.1 Ms. Berkers realleges and incorporates paragraphs 1.1 thru 2.94 as if fully set forth herein.

21 3.2 State and federal law provide that hostile work environment sexual harassment is a
 22 violation of law.

23 3.3 State and federal law state provide sexual harassment includes verbal or physical conduct
 24 of a sexual nature where such comments or conduct have the purpose or effect of unreasonably interfering
 25 with an individual's work performance or creating an intimidating, hostile, or offensive work
 26 environment.

1 3.4 Ms. Berkers did not solicit or invite the words and physical conduct of Mr. Klein or Ms.
2 Hill.

3 3.5 Ms. Berkers was repeatedly subjected to both offensive, sexually-related comments as well
4 as physical conduct such as poking and blowing on her neck and ears.

5 3.6 Ms. Berkers was repeatedly subjected to both the verbal and physical conduct in the
6 presence of her supervisor, Ms. Hill.

7 3.7 Ms. Hill repeatedly encouraged the conduct of Mr. Klein because of her friendship with
8 Mr. Klein outside of the workplace.

9 3.8 Ms. Berkers regarded the conduct as undesirable and offensive and informed her
10 supervisor, Laina Hill that such conduct was undesirable.

11 3.9 The continual nature of the physical harassment and the vulgarity and daily occurrence of
12 the verbal harassment created a hostile and abusive work environment.

13 3.10 Any attempt, if any, by Ms. Berkers to be playful or endure the ongoing harassment in an
14 effort to improve relations with her hostile and threatening co-workers did not waive her legal protections
15 against sexual harassment.

16 3.11 As a result of Rite Aid's conduct, Ms. Berkers has suffered injury in an amount to be
17 proven at trial.

18
19
20 **IV. CLAIM FOR WRONGFUL/CONSTRUCTIVE DISCHARGE IN**
21 **VIOLATION OF PUBLIC POLICY**

22 4.1 Ms. Berkers realleges and incorporates paragraphs 1.1 thru 3.11 as if fully set forth herein.

23 4.2 State and federal law provides that an employer engages in wrongful discharge in violation
24 of public policy where employees are fired for exercising a legal right or privilege.

25 4.3 State and federal law provides that an employer engages in wrongful discharge in violation
26 of public policy where employees are fired for reporting employer misconduct.

1 4.4 State and federal law provides that an employer engages in wrongful constructive
2 discharge when it creates intolerable working conditions, forcing an employee to resign.

3 4.5 Ms. Berkers' complaints to managers, district managers and ultimately, corporate human
4 resources manager, Mr. Gonzalez about the repeated, continual sexual harassment she was being forced to
5 endure resulted in instant retaliation by Ms. Berkers' immediate supervisors and co-workers.

6 4.6 Ms. Berkers has a right to a work environment free from sexual harassment and hostility.

7 4.7 Ms. Berkers has been constructively terminated from her employment because she cannot
8 withstand the open hostility and retaliation that she is subjected to at the Franklin Park Rite Aid as a direct
9 result of her complaints to management.

10 4.8 Mr. Gonzalez, the human resources representative for Rite Aid, has indicated that Rite Aid
11 is not going to fire Ms. Berkers and will not transfer Ms. Berkers to another store.

12 4.9 Rite Aid's constructive termination of Ms. Berkers' employment contravenes the clear
13 mandate of public policy outlined by the law.

14 4.10 Rite Aid's conduct contravenes the letter and purpose of the law protecting an employee
15 from a hostile work environment.

16 4.11 Rite Aid's constructive termination of Ms. Berkers' employment was a result of her report
17 of employer misconduct.

18 4.12 Rite Aid's constructive termination of Ms. Berkers' employment was a result of her
19 exercise of a legal right and/or privilege.

20 4.13 Rite Aid's constructive termination of Ms. Berkers was in retaliation for her opposing Rite
21 Aid's unlawful conduct.

22 4.14 Discouraging the conduct in which Ms. Berkers engaged jeopardizes the public policy
23 outlined by law.

1 4.15 As a result of Rite Aid's conduct, Ms. Berkers has suffered economic and noneconomic
2 injury in an amount to be proven at trial.

3 V. CLAIM FOR NEGLIGENT AND/OR INTENTIONAL
4 INFLICTION OF EMOTIONAL DISTRESS

5 5.1 Ms. Berkers realleges and incorporates paragraphs 1.1 thru 4.15 as if fully set forth herein.

6 5.2 Rite Aid engaged in negligent, intentional and/or reckless conduct toward Ms. Berkers that
7 was extreme and outrageous.

8 5.3 As a direct and proximate result of Rite Aid's actions and/or omissions, Ms. Berkers has
9 suffered extreme emotional distress and other damages in an amount to be proven at the time of trial.

10 VI. CLAIM FOR DISABILITY DISCRIMINATION IN VIOLATION
11 OF STATE AND FEDERAL LAW

12 6.1 Ms. Berkers realleges and incorporates paragraphs 1.1 through 5.3 as if fully set forth
13 herein.

14 6.2 By and through its managers, and Ms. Berkers' supervisors, Rite Aid was put on notice of
15 Ms. Berkers' medical disability at the time of the robbery which occurred on approximately April 29,
16 2009.

17 6.3 Despite Ms. Berkers' requests for support for the trauma experienced during and after the
18 robberies, Rite Aid failed to provide any follow up care, support or accommodation for Ms. Berkers.

19 6.4 Ms. Berkers' medical disability was ultimately diagnosed by her medical providers in
20 approximately September 2009.

21 6.5 Ms. Berkers' medical providers' diagnosis of Ms. Berkers' medical disability, including the
22 impact of the ongoing hostile work environment on Ms. Berkers' medical disability was communicated
23 immediately to Rite Aid Corporation in approximately September 2009.
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1 6.6 In approximately September 2009, vacant positions existed in Spokane, Washington Rite
2 Aid stores, which Ms. Berkers could have filled and was qualified to fill.

3 6.7 Rite Aid failed to take affirmative measures to make such job opportunities known to Ms.
4 Berkers.

5 6.8 Rite Aid failed to transfer Ms. Berkers' despite her formal request for a transfer to a
6 different Spokane, Washington store.

7 6.8. Rite Aid failed to accommodate Ms. Berkers' medical disability.

8 6.9 As a direct and proximate result of Rite Aid's actions and/or omissions, Ms. Berkers has
9 suffered damages in an amount to be proven at the time of trial.

10
11 **VII. CLAIM FOR VIOLATION OF CONSUMER PROTECTION ACT**

12 7.1 Ms. Berkers realleges and incorporates paragraphs 1.1 thru 6.9 as if fully set forth herein.

13 7.2 Rite Aid's conduct constitutes unfair or deceptive acts or practices, which have occurred in
14 trade or commerce.

15 7.3 Rite Aid's acts or practices have had an impact on the public interest.

16 7.4 Rite Aid's acts or practices have caused injury to Ms. Berkers in her business or property.

17 7.5 As a result of Rite Aid's actions, Ms. Berkers has suffered injury in an amount to be proven
18 at the time of trial.

19
20 **VIII. CLAIM FOR COBRA VIOLATIONS**

21 8.1 Ms. Berkers realleges and incorporates paragraphs 1.1 thru 7.5 as if fully set forth herein.

22 8.2 Ms. Berkers began medical leave from her employment at Rite Aid on approximately
23 September 24, 2009.

24 8.3 Upon information and belief, Ms. Berkers' medical benefits were terminated, without
25 warning on approximately November 21, 2009.

1 8.4 Ms. Berkers' employment with Rite Aid had not been terminated when her medical
2 benefits were terminated.

3 8.5 Rite Aid's actions and omissions are a violation of state and federal law.

4 8.6 As a result of Rite Aid's actions and omissions, Ms. Berkers has been damaged in an
5 amount to be determined at the time of trial.

6 **IX. CLAIM FOR WAGE AND HOUR LAW VIOLATIONS**

7
8 9.1 Ms. Berkers realleges and incorporates paragraphs 1.1 thru 8.6 as if fully set forth herein.

9 9.2 Ms. Berkers was an hourly employee of Rite Aid.

10 9.3 For the two months that Ms. Berkers was on medical leave, Rite Aid failed to pay Ms.
11 Berkers her wages due, including without limitation overtime wages due.

12 9.4 Rite Aid's actions and omissions outlined herein were willful and with intent to deprive
13 Ms. Berkers of wages Rite Aid was obligated to pay by statute, contract and otherwise.

14 9.5 Rite Aid's actions violate Washington law, including without limitation, RCW 49.46 et.
15 seq.; RCW 49.48 et. seq.; RCW 49.52 et. seq.; WAC 296-126 et. seq.; WAC 296-128 et. seq.

16 9.6 As a result of Rite Aid's actions, Ms. Berkers has suffered damages in an amount to be
17 proven at the time of trial. This includes, without limitation, twice the amount of wages unlawfully
18 withheld, attorney's fees and costs.

19 **X. DAMAGES**

20 10.1 Plaintiff realleges and incorporates by reference the forgoing allegations as if fully set forth
21 herein.

22 10.2 As a direct, proximate and foreseeable result of the wrongful actions, omissions and fault
23 of Defendant, its agents, employees and representatives, Ms. Berkers has suffered general, non-economic
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1 damages, harms and losses, including but not limited to loss of enjoyment of life, mental and emotional
2 distress, loss of consortium, and other general, non-economic damages.

3 10.3 As a direct, proximate and foreseeable result of the wrongful actions, omissions and fault
4 of Defendant, its agents, employees and representatives, Ms. Berkers has suffered special, economic
5 damages, harms and losses, including but not limited to loss of past and future earnings, wages, pensions,
6 benefits and other out-of-pocket economic losses.
7

8 **WHEREFORE**, Plaintiff Elizabeth Berkers requests that the Court provide the following relief:

9 1. For general, non-economic damages, harms and losses, including but not limited to
10 loss of enjoyment of life, mental and emotional distress, loss of consortium, and other general, non-
11 economic damages;

12 2. For special, economic damages, harms and losses, including but not limited to loss
13 of past and future earnings, wages, pensions, benefits and other out-of-pocket economic losses;

14 3. For judgment against Defendant Rite Aid Corporation for treble damages sustained
15 by Ms. Berkers pursuant to RCW 19.86, et. seq.;

16 4. For an award of Plaintiff's reasonable attorney's fees and costs incurred herein
17 pursuant to RCW 19.86.090, 49.46.090, 49.52.070, or as otherwise provided by law;

18 5. For pre-judgment and post-judgment interest; and

19 6. For such other and further relief as the Court deems just and equitable.
20
21

22 DATED this 24th day of March, 2010.

23
24 

25 EOWEN S. ROSENTRATER, WSBA No. 36744
26 Law Office of Eowen S. Rosentrater, PLLC
Attorney for Plaintiff, Elizabeth Berkers

1 STATE OF WASHINGTON)

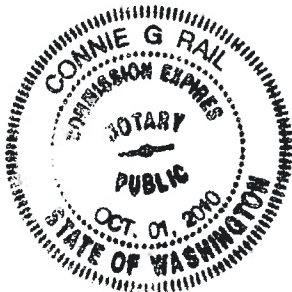
2 :ss
3 County of Spokane)

4 ELIZABETH BERKERS, being first duly sworn upon oath, deposes and states:

5 That I am the Plaintiff in the above case; that I have read the foregoing COMPLAINT FOR
6 DAMAGES, know the contents thereof and believe the same to be true to the best of my knowledge and
7 information.

8 Elizabeth J. Berkers
9 ELIZABETH BERKERS

10 SUBSCRIBED AND SWORN to before me this 19 day of March, 2010.



19
Connie G. Rail
Notary Public for the State of Washington
Residing at: Spokane
My Commission expires: 10-01-10